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Date of Decision: 7th October 1995

SPECIAL CIVIL APPLICATION NO. 6724 of 1989

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri Suresh M. Shah, Advocate, for the Petitioners

Shri Y.M. Thakkar, Asst. Govt. Pleader, for the Respondents

CORAM: A.N. DIVECHA, J.
(Date: 7th October 1995)

ORAL JUDGMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 22nd January 1987 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act' for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 2nd June 1989 in Appeal No. Rajkot-40 of 1987 is under challenge in this petition under Art. 226 of the Constitution of India. By

his impugned order, respondent No.1 declared the holding of the petitioners to be in excess of the ceiling limit by 12664 square meters.

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that the petitioners filed their joint and separate declarations with respect to their holding within the urban agglomeration of Rajkot in the prescribed form under sec. 6(1) of the Act. That form was duly processed and by his order passed on 22nd January 1987 under sec. 8(4) of the Act, respondent No.1 declared the holding of the petitioners to be in excess of the ceiling limit by 12664 square meters. Its copy is at Annexure C to this petition. The aggrieved petitioners carried the matter in appeal before respondent No.2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-40 of 1987. By his order passed on 2nd June 1989 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure E to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning the correctness of the order at Annexure C to this petition as affirmed in appeal by the appellate order at Annexure E to this petition.

3. At the stage of its preliminary hearing, the submission was restricted only to the question whether or not the two petitioners are entitled to one unit or two units under the Act. So far as the rest of the impugned order is concerned, this court as affirmed it.

4. It is the case of the petitioners that they are co-owners and they ought not to have been treated as an association of persons. Learned Advocate Shri Shah for the petitioners is right in his submission in that regard that co-owners of a parcel of land are not an association of persons in view of the Division Bench ruling of this court in the case of Chhaganlal Trikamdas Thakker and Others v. Competent Authority, Rajkot and Others reported in 1994(1) Gujarat Current Decisions at page 1. In that view of the matter, the conclusion reached by the authorities below that the petitioners are an association of persons cannot be accepted.

5. It appears that the petitioners filed their declarations styling themselves as an association of persons. It transpires from the appellate order at Annexure E to this petition that they filed separate declarations also with respect to their share in the land in question. It cannot be gainsaid that the Act was new at that time and no one was conversant with respect to the correct procedure to be followed. It transpires from the record that the petitioners jointly purchased the land and they treated themselves as joint owners instead of co-owners and

styled themselves as an association of persons. Such admission by them as an association of persons can be said to be an admission with respect to a mistaken legal position. Such admission would not be binding to them as it is based on misconception of law.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure C to this petition as affirmed in appeal by the appellate order at Annexure E to this petition to the extent the petitioners are treated as an association of persons cannot be sustained in law. Each petitioner would be entitled to a separate ceiling unit of 1500 square meters. The rest of the impugned order at Annexure C to this petition is maintained subject to the aforesaid modification.

7. In the result, this petition is partly accepted. The order passed by the Competent Authority at Rajkot on 22nd January 1987 at Annexure C to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 2nd June 1989 in Appeal No. Rajkot-40 of 1987 at Annexure E to this petition is modified by substituting the excess vacant land to be 11,164 square meters as against 12,664 square meters by allowing each petitioner a ceiling unit of 1500 square meters. It is clarified that it would be open to the respondents to take possession of the excess lands to the extent of 11164 square meters in terms of the notice issued under sec. 10(5) of the Act on 25th September 1989 as stated by the learned Assistant Government Pleader on instructions. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
